



Chapter 3 Adjustments

**Annual National Seminar
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Discussion Topics

- Chapter 3 statistics
- Aggravating Role
- Mitigating Role
- Vulnerable Victim
- Obstruction of Justice
- Acceptance of Responsibility



Commission Resources



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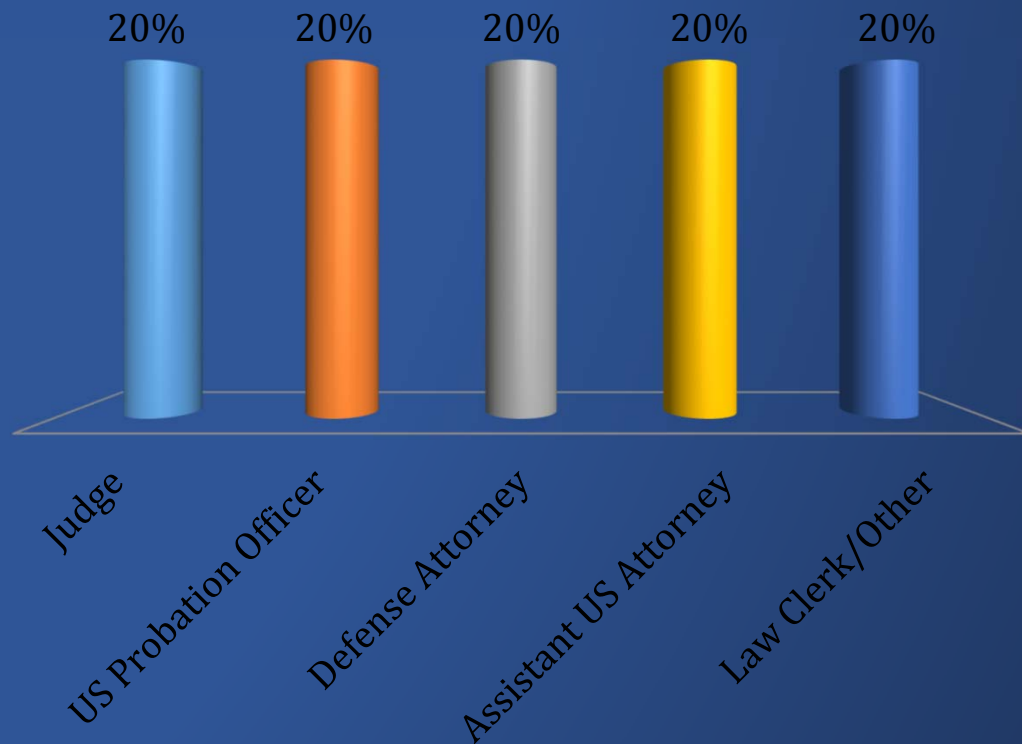
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What position do you hold?

- A. Judge
- B. US Probation Officer
- C. Defense Attorney
- D. Assistant US Attorney
- E. Law Clerk/Other



Commission Sentencing Statistics



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General Principles



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Multiple “participants” required for a role adjustment ⁹

Pursuant to §3B1.2, App. Note 1 – referenced to §3B1.1, App. Note 1
and §3B1.2, App. Note 2

- Participants have to be criminally responsible, but not necessary charged or convicted
- The defendant is a participant; informants may be participants; undercover officers are not
- A role reduction is not applicable unless more than one participant was involved in the offense





Aggravating Role

§3B1.1

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AGGRAVATING AND MITIGATING ROLE ADJUSTMENTS §§3B1.1 & 3B1.2

June 2015

Prepared by the Office of General Counsel, U.S. Sentencing Commission

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Aggravating Role

§3B1.1

- Based on two factors:
 - Defendant acted as organizer, leader, manager, or supervisor
 - Number of participants or “otherwise extensive”



Aggravating Role (cont.)

§3B1.1

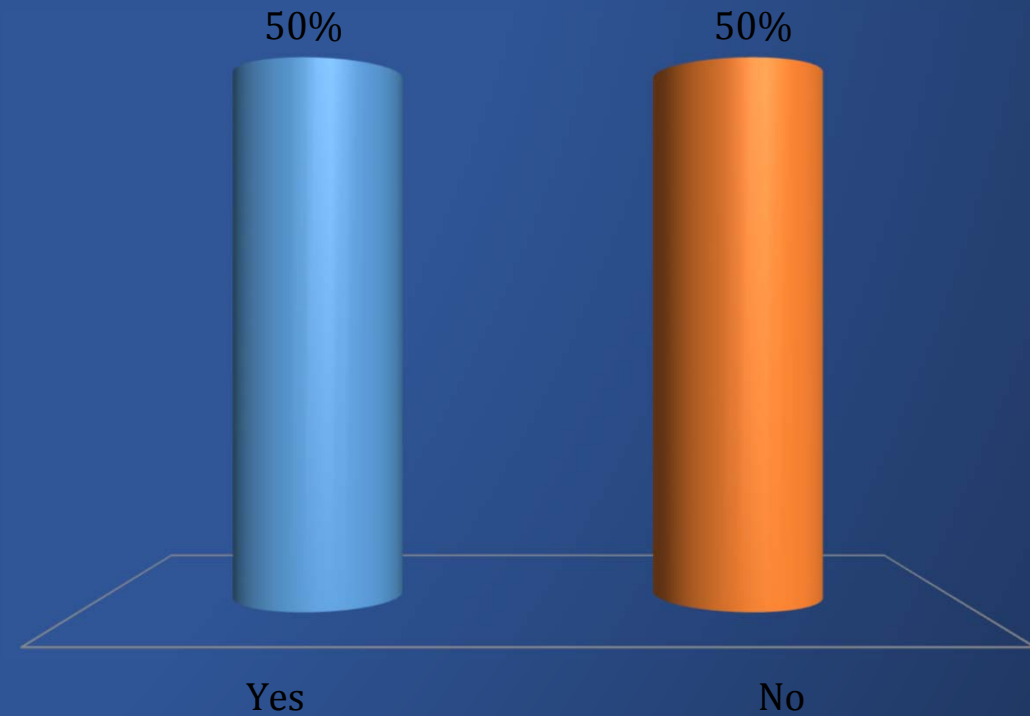
- Burden of persuasion is on the government
- Standard of proof is preponderance of the evidence
- If government meets burden, courts must apply



1. Is the Court permitted to deny a role enhancement?

A. Yes

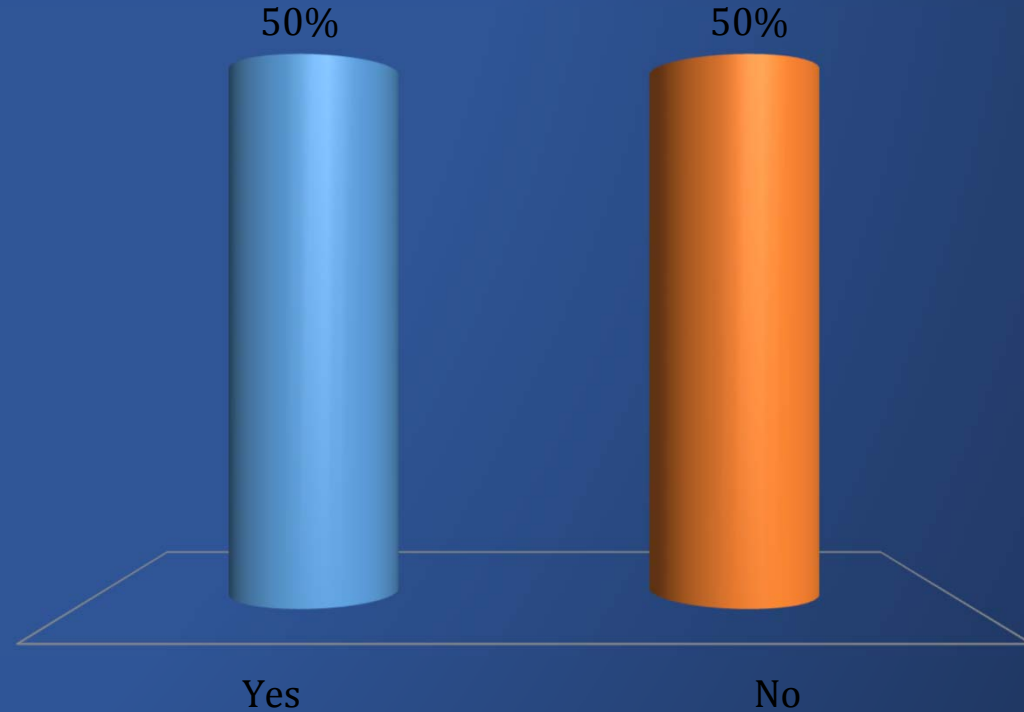
B. No



2. Would an aggravating role enhancement be applicable in this case?

A. Yes

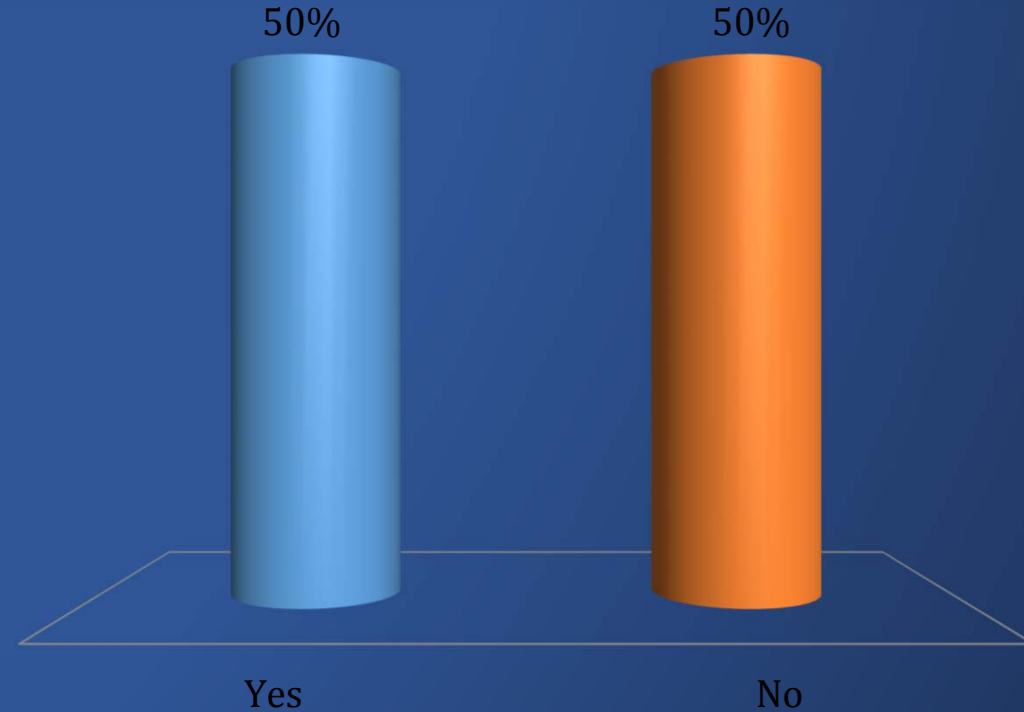
B. No



3. Would an aggravating role enhancement be applicable in this case?

A. Yes

B. No





Mitigating Role

§3B1.1

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AGGRAVATING AND MITIGATING ROLE ADJUSTMENTS §§3B1.1 & 3B1.2

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Mitigating Role Adjustment

Misperceptions?

- All drug couriers must or should receive a mitigating role reduction.
- In a drug case involving multiple defendants, someone must or should receive a role reduction.
- Role reductions are rare in fraud cases.
- Someone who plays an important or essential role in the criminal activity can't receive a role reduction.



Role in the Offense Adjustments

Chapter Three, Part B

- §3B1.2 Mitigating Role

- If the defendant was a minimal participant in any criminal activity,
decrease by 4 levels.
- If the defendant was a minor participant in any criminal activity,
decrease by 2 levels.
- In cases falling between (a) and (b),
decrease by 3 levels.



Mitigating Role

§3B1.2 Minor Role App. Note 3(A)

Applicability of Adjustment –

Designed for the defendant who is “substantially less culpable than the average participant – **in the criminal activity.**”



Factors for the Court to Consider

§3B1.2, App. Note 3(C) – non-exhaustive list

- i. The degree to which the defendant understood the scope and structure of the criminal activity
- ii. The degree to which the defendant participated in the planning/organization of the activity
- iii. The degree to which the defendant exercised decision-making authority
- iv. The nature and extent of the defendant's participation in the commission of the criminal activity
- v. The degree to which the defendant stood to benefit from the criminal activity



Examples

§3B1.2, App. Note 3(C)

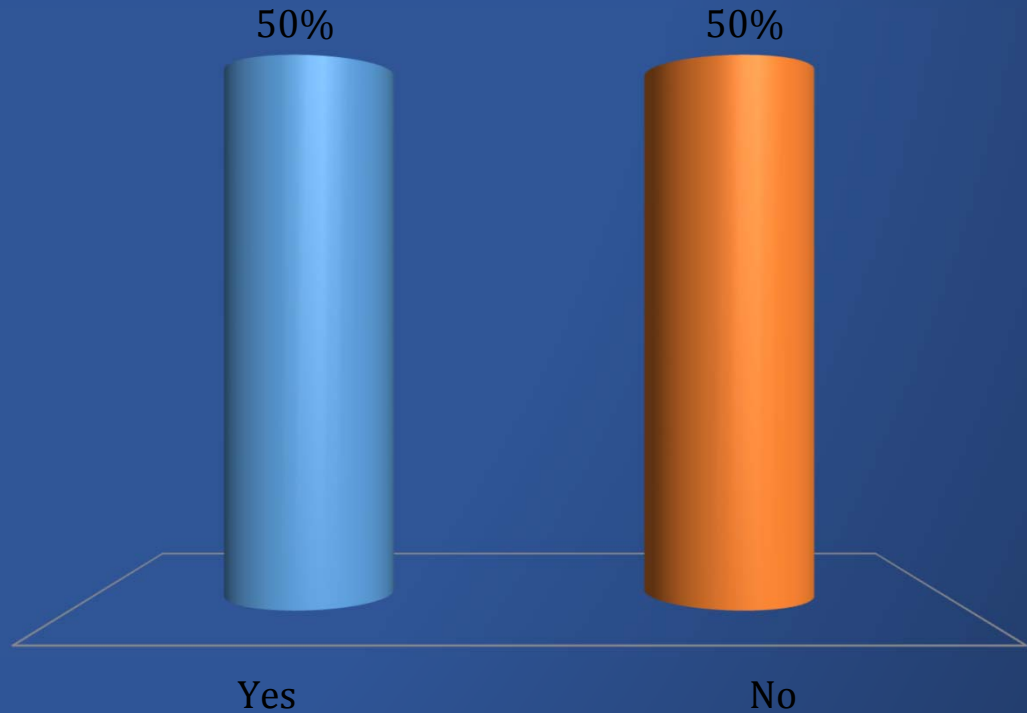
- Provides example that a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment.
- Provides that the fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.



4. Should the defendant on the outside receive a mitigating role reduction?

A. Yes

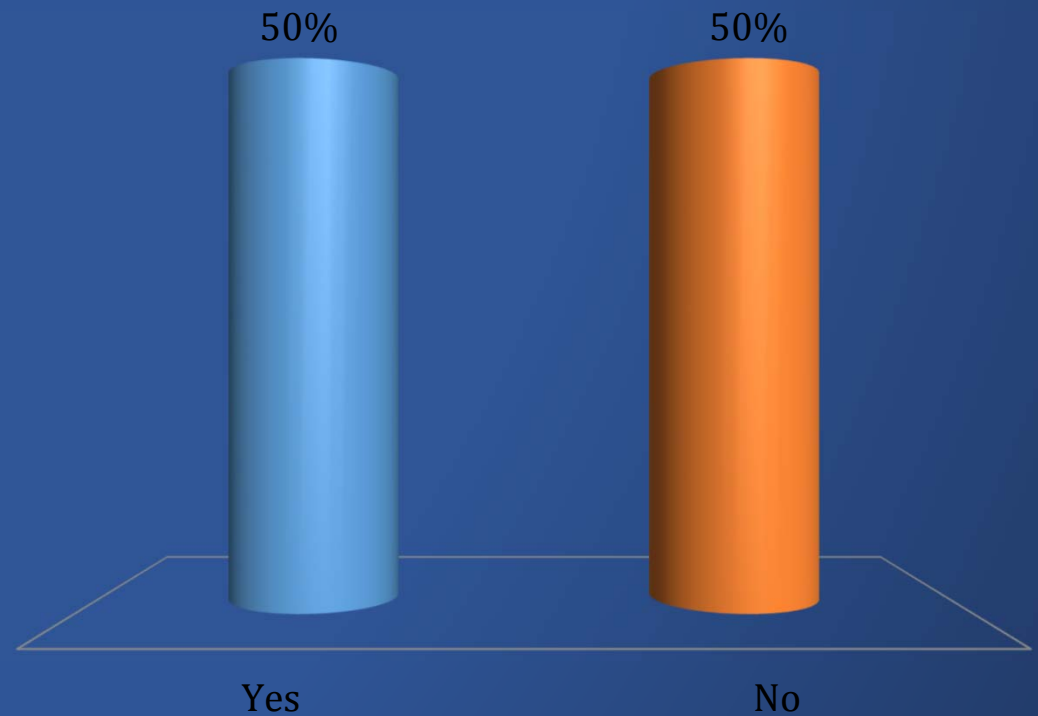
B. No



5. Should Davies receive a mitigating role reduction?

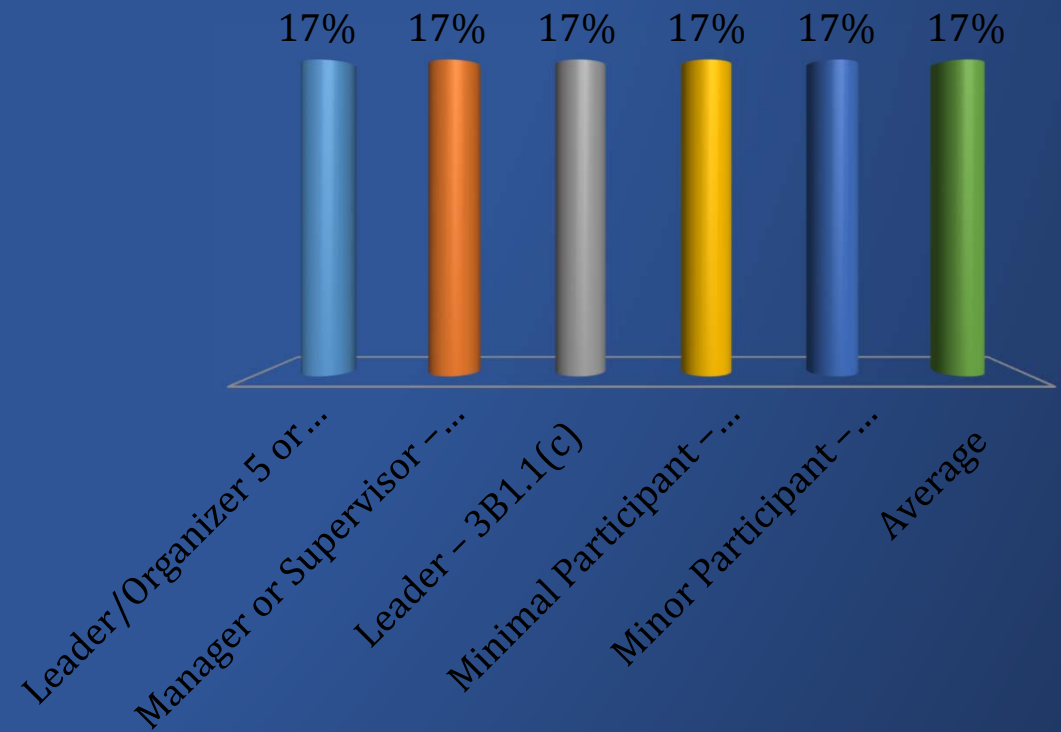
A. Yes

B. No



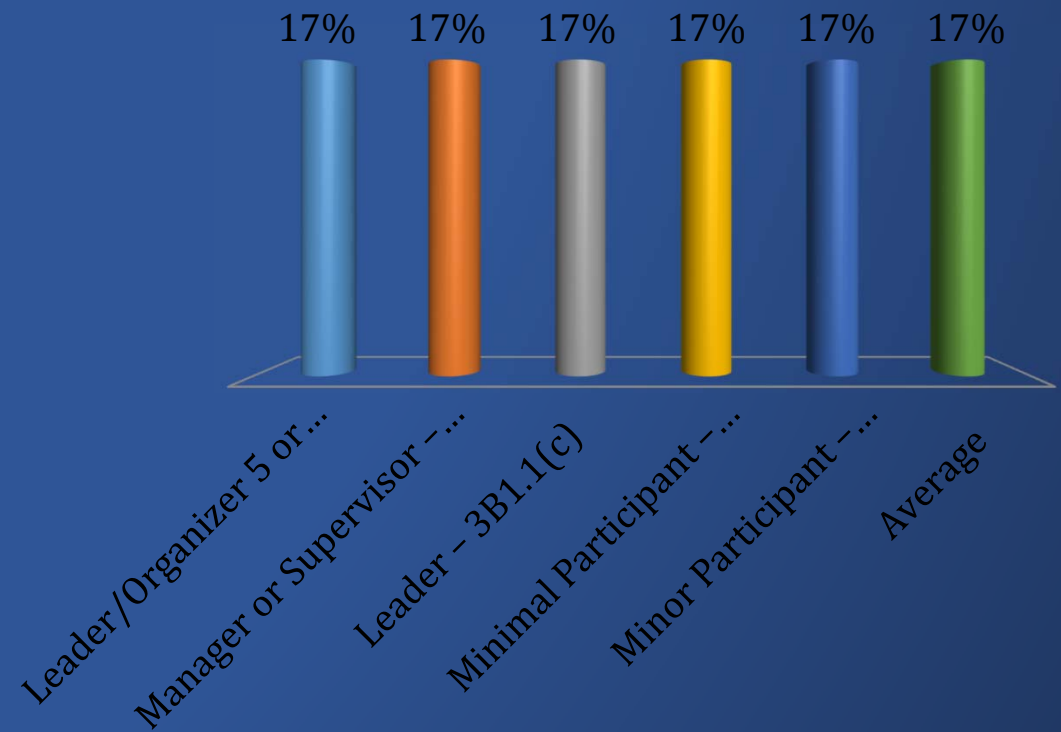
6. What role would you assign to Stevens?

- A. Leader/Organizer 5 or more – 3B1.1(a)
- B. Manager or Supervisor – 3B1.1(b)
- C. Leader – 3B1.1(c)
- D. Minimal Participant – 3B1.2(a)
- E. Minor Participant – 3B1.2(b)
- F. Average



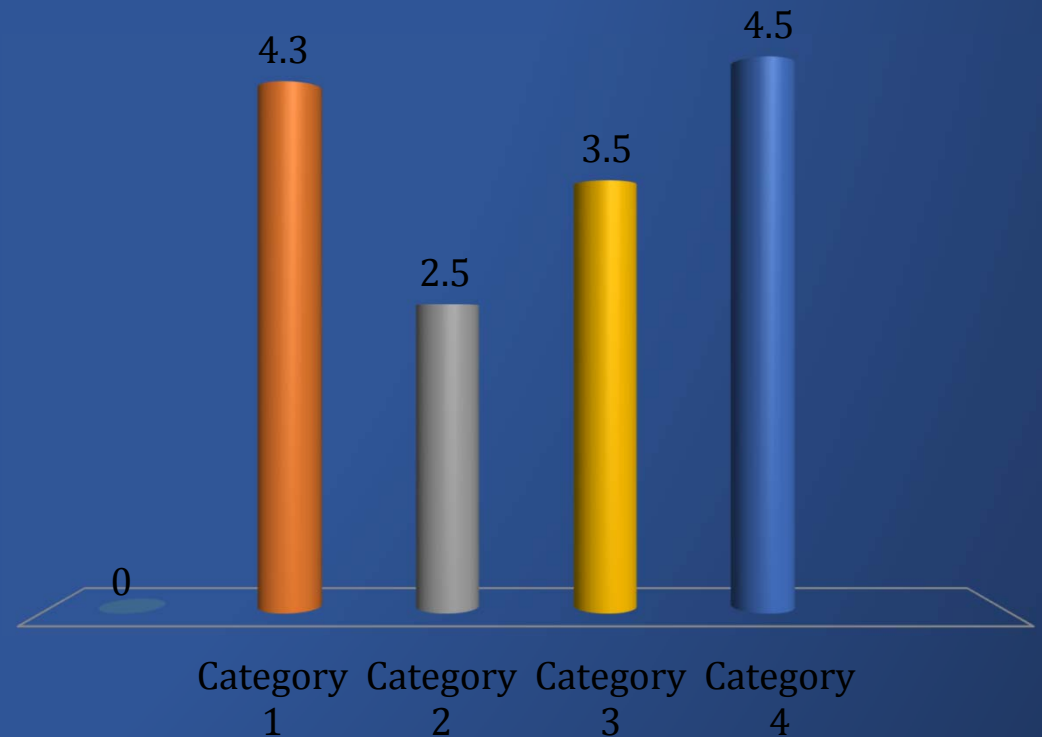
6.1 What role would you assign to Joel?

- A. Leader/Organizer 5 or more – 3B1.1(a)
- B. Manager or Supervisor – 3B1.1(b)
- C. Leader – 3B1.1(c)
- D. Minimal Participant – 3B1.2(a)
- E. Minor Participant – 3B1.2(b)
- F. Average



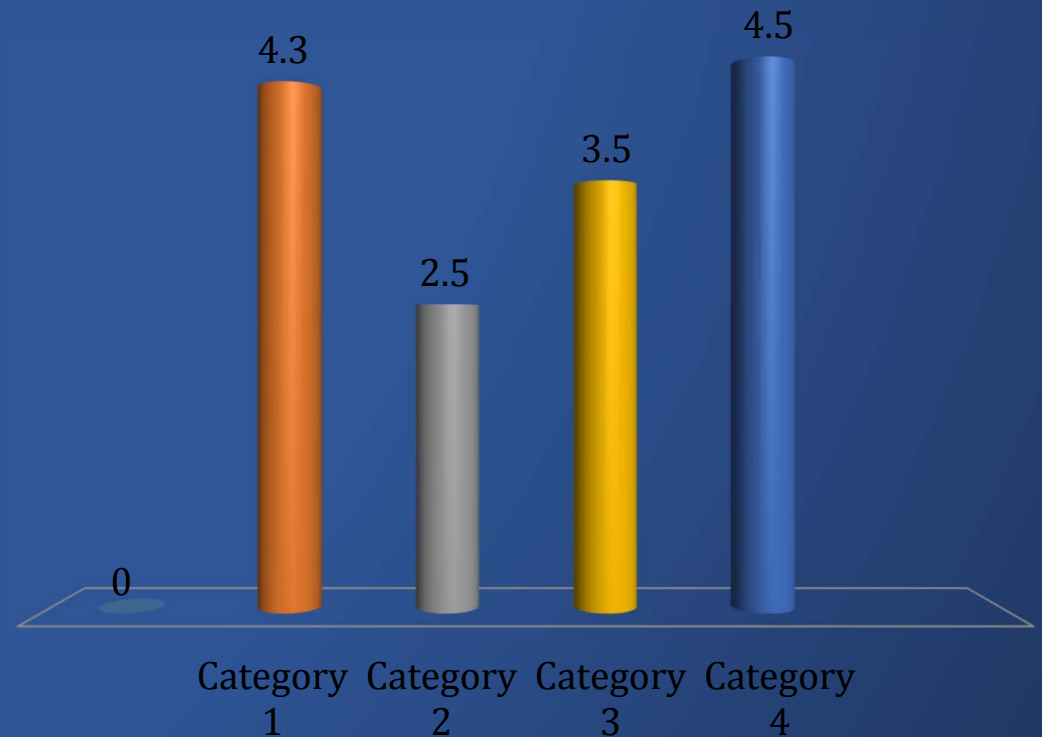
6.2 What role would you assign to Robins?

- A. Leader/Organizer 5 or more – 3B1.1(a)
- B. Manager or Supervisor – 3B1.1(b)
- C. Leader – 3B1.1(c)
- D. Minimal Participant – 3B1.2(a)
- E. Minor Participant – 3B1.2(b)
- F. Average



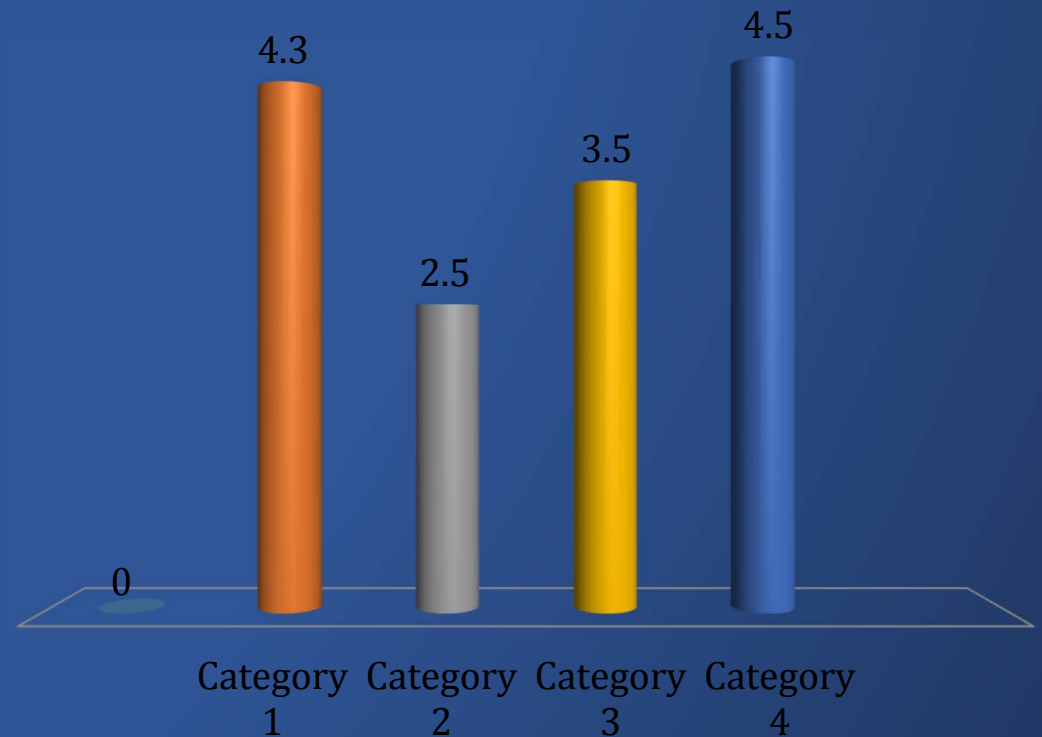
6.3 What role would you assign to Tierra?

- A. Leader/Organizer 5 or more – 3B1.1(a)
- B. Manager or Supervisor – 3B1.1(b)
- C. Leader – 3B1.1(c)
- D. Minimal Participant – 3B1.2(a)
- E. Minor Participant – 3B1.2(b)
- F. Average



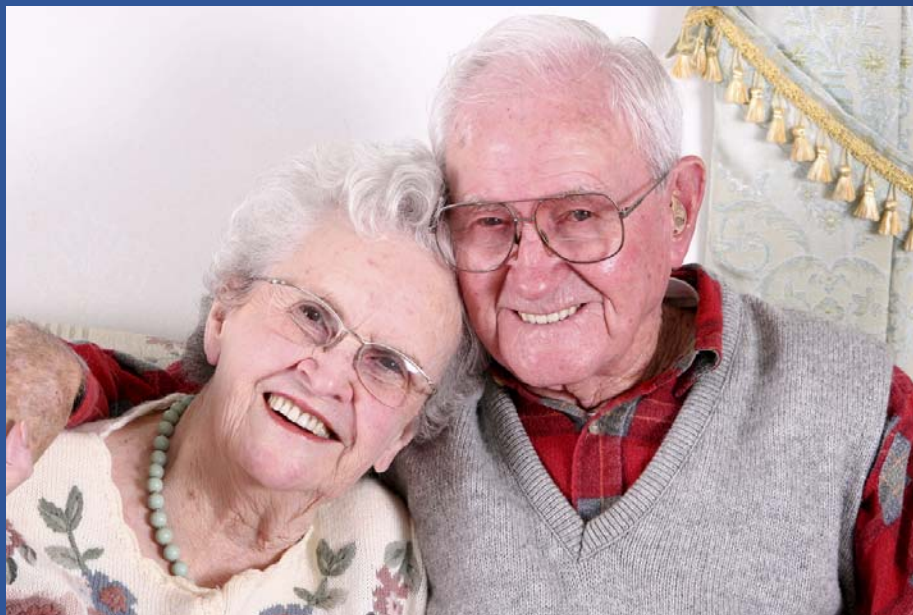
6.4 What role would you assign to Marjorie?

- A. Leader/Organizer 5 or more – 3B1.1(a)
- B. Manager or Supervisor – 3B1.1(b)
- C. Leader – 3B1.1(c)
- D. Minimal Participant – 3B1.2(a)
- E. Minor Participant – 3B1.2(b)
- F. Average





Vulnerable Victim



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Vulnerable Victim

3A1.1

- (b)(1) - If the defendant knew or should have known that a victim of the offense was a **vulnerable victim**, increase by **2** levels.
- (b)(2) - If (A) subdivision (1) applies; and (B) the offense involved **a large number of vulnerable victims**, increase the offense level determined under subdivision (1) by **2** additional levels.



Vulnerable Victim

3A1.1, App. Note 2

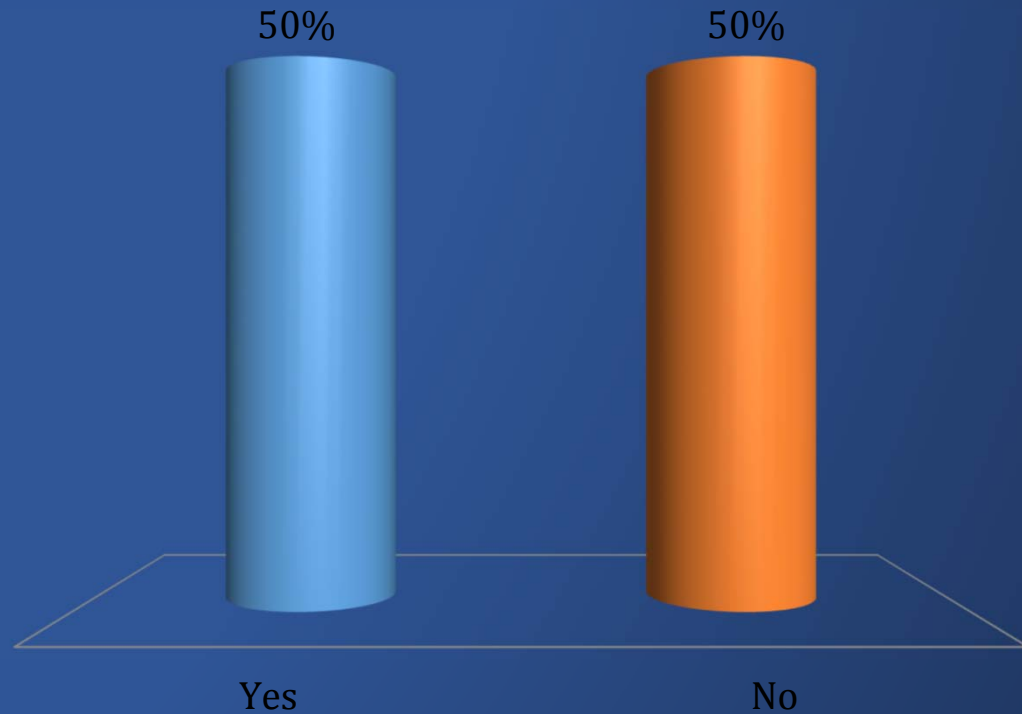
- For purposes of subsection (b), “**vulnerable victim**” means a person (A) who is a victim of the offense of conviction and any conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct); and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.



7. Would an enhancement be applicable in this case where the victim was retired or on disability?

A. Yes

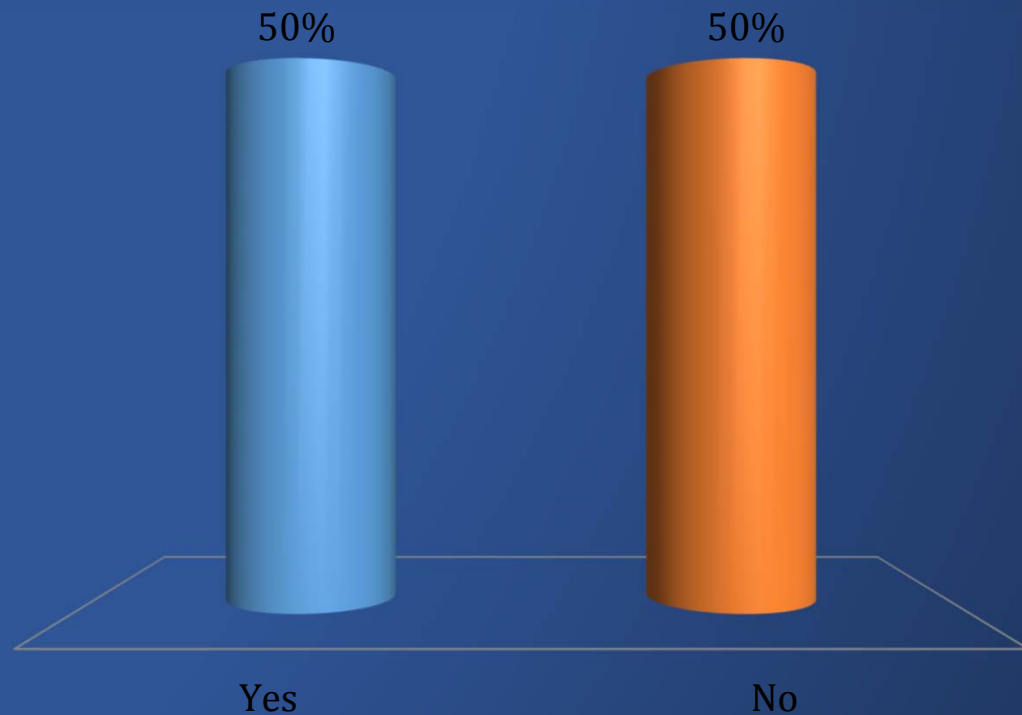
B. No



8. Would an enhancement be applicable in this case where victims were elderly or incarcerated?

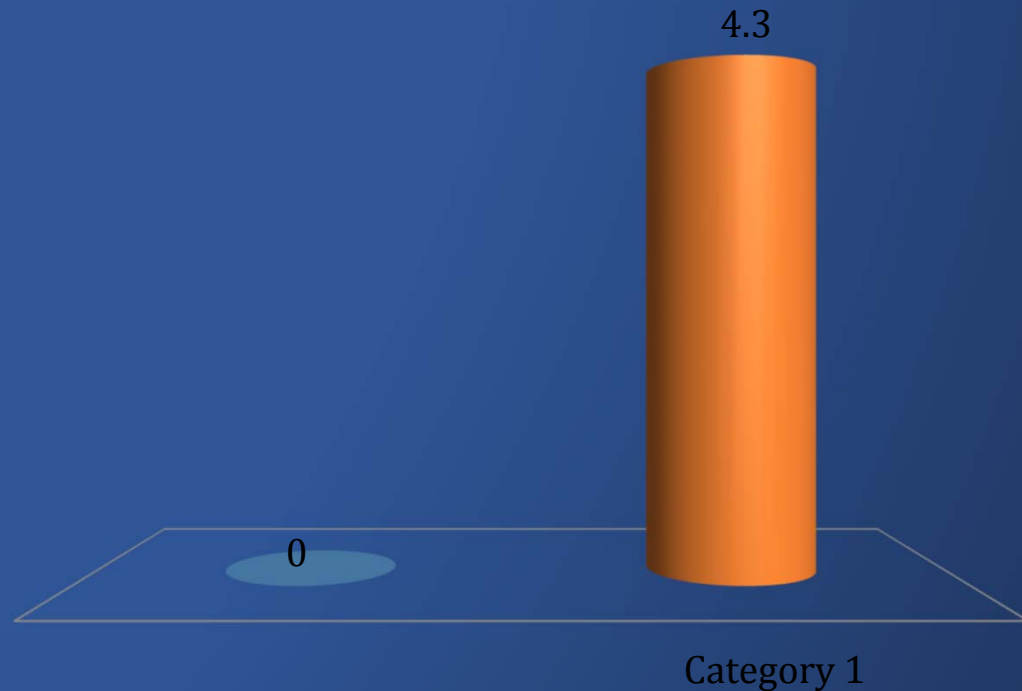
A. Yes

B. No



9. Would an enhancement be applicable in this case a defendant's victim was 14 years old?

- A. Yes
- B. No





Obstruction of Justice



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Obstruction of Justice

3C1.1

- If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by **2** levels.



10. Would an enhancement be applicable in this case where the defendant lied when she entered a plea of guilty?

- A. Yes
- B. No



11. Would an enhancement be applicable when a defendant lies about his personal and family background during a PSI interview?

- A. Yes
- B. No



12. Would an enhancement be applicable in this case where a defendant threatened his girlfriend who was a witness?

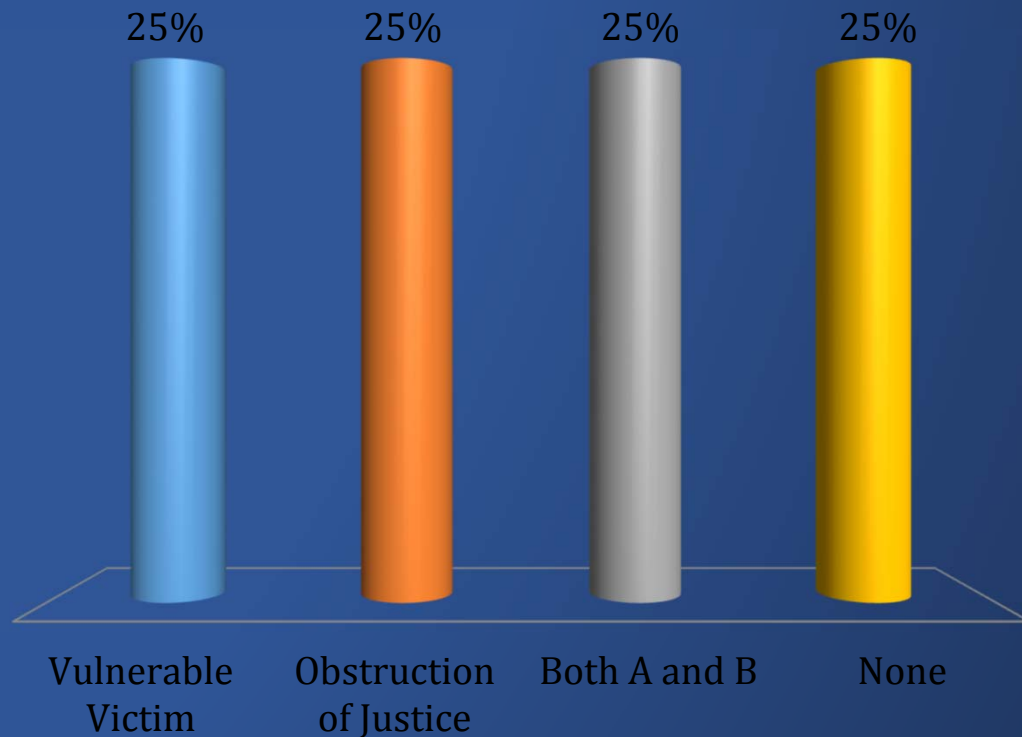
A. Yes

B. No



13. Are there any Chapter 3 enhancements for Andrews, Bates, and Cross?

- A. Vulnerable Victim
- B. Obstruction of Justice
- C. Both A and B
- D. None





Acceptance of Responsibility



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Acceptance

§3E1.1(a) and (b)

- (a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.
- (b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level.



14. Should the defendant receive +2 for obstruction and also lose acceptance of responsibility reduction?

A. Yes

B. No



15. Should the defendant receive +2 for obstruction and also lose acceptance of responsibility reduction?

A. Yes

B. No





Thank you



Questions?



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